IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 309-SB of 1991

Date of Decision: 04.04.2007

Joginder Singh and Another

....Appellants-Accused

Versus

The State of Haryana

...Respondent

CORAM : HON'BLE MR.JUSTICE MEHTAB S. GILL

Present: Mr.Jasjit Bedi, Advocate
for appellant-Joginder Singh.

Mr.Kulvir Narwal, Addl.AG, Haryana assisted
by Mrs.Baljeet Mann and Mr.Sandeep Mann, Advocates
for the complainant.

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MEHTAB S. GILL, J.

I will be deciding Criminal Appeal No. 309-SB of 1991 and Criminal Revision No. 585 of 1991 with this common judgment as they arise out of the same judgment dated 27.7.1991 passed by the learned Additional Sessions Judge, Kaithal, whereby he convicted Joginder Singh son of Dariya Singh and Rijak Ram son of Karam Singh, under Section 307/324/34 IPC and sentenced them to undergo various terms.

Learned counsel for the appellants states, that Rijak Ram son of Karam Singh has died. Appeal against him has thus abated. We are left with the appeal of Joginder Singh son of Dariya Singh.

The case of the prosecution is that on the basis of ruqa Ex.PA, FIR Ex.PA/2 was recorded on the statement of Karambir. He stated that he was on leave for the last 30 days. On 22.3.89 at about 9.00 p.m. he along with Veer Bhan was standing near the Khera and appellants Rijak Ram and Joginder Singh came there and asked Veer Bhan to play Holi. Both the accused, at that time, were under the influence of liquor. Veer Bhan refused to play Holi with them. Both, the complainant party and the accused, being related to each other. Appellants felt offended and started abusing Veer Bhan. They left the place and came back after 15 minutes. Appellant Rijak Ram caught hold of Veer Bhan and appellant Joginder Singh, who had a knife concealed under the blanket which he had on himself, gave a blow to Veer Bhan, which hit him on the left side, just below the chest. Joginder Singh-appellant then gave a knife blow, which hit on the left side of the chest of Karambir. Mahabir son of Thakur Singh and Balbir Singh son of Chhau Ram witnessed the occurrence.

The prosecution to prove case brought into the witness box Karambir Singh as PW1, Veer Bhan as PW2, Dr.S.K.Singla as PW3, Head Constable Dharambir Singh as PW4, Mukesh Kumar Draftsman as PW5, Head Constable Prita Ram as PW6, Sub Inspector Puran Chand as PW7, Dr. Parveen as PW8, Dr.Karambir Singh as PW9 and ASI Kalu Ram as PW10. PWs Mahabir Singh and Balbir Singh were given up as having been won over by the accused and PWs Head Constable Dayala Ram, Constable Kehar Singh and Inspector Gurdial Singh were given up as being unnecessary.

Learned counsel for the appellants has argued, that there is an unexplained delay in lodging of the FIR. There are material contradictions

in the statements of the eye witnesses, Both, Karambir Singh (PW1) and Veer Bhan (PW2) have given diverged versions. Learned counsel for the State has argued, that the injuries on both the eye witnesses, Veer Bhan (PW2) and Karambir Singh (PW1), could not be self inflicted, nor could the same be with a friendly hand. Both the injured eye witnesses have received penetrating wounds, which the doctor has opined could be given by a sharp pointed weapon. Both the witnesses have corroborated each other. They get corroboration from the medical evidence.

I have heard learned counsel for the parties and perused the record and the impugned judgment with their assistance.

The injuries suffered by Veer Bhan (PW2) are as under:

> "A penetrated wound 1.5 x 0.5 cm present on the left side of abdomen near costal margin about 12 cms from mid line. The wound was elliptical in shape. It was incised in character. Edges were clean cut. The lower end was more narrow. The wound was vertically oblique. There was a cut in the shirt corresponding to the wound. The shirt was blood stained. Fresh bleeding was present from the wound. No probing was done.
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> The patient was in shock. B.P. 60. Pulse was fast and feeble. Extramities were cold. The patient was not fully conscious."

Dr.S.K.Singla (PW3) examined Veer Bhan (PW2) on 22.3.1989

at 11.10 p.m and has opined that the injuries could be caused by a sharp pointed weapon. He examined Karambir Singh (PW1) on the same day at 11.45 p.m. and found the following injuries:

> "Penetrating wound 2.5 cm present on the left side of chest in mid axillary line 10 inches below the axilla. The wound was incised in character. Both the ends were appearing more so lower end. Edges were clean cut. The wound was elliptical in shape vertically oblique. There was a cut in the shirt corresponding to the wound. The shirt was blood stained. The wound was bleeding. No probing was done. The injured was fully conscious. B.P. 100/70. Pulse 100 per minute. No respiratory distress."

The investigating officer moved an application Ex.PF to record the statement of Veer Bhan, but vide endorsement Ex.PF/1, Dr.S.K.Singla (PW3) stated, that Veer Bhan had been referred to PGI, Chandigarh and Karambir was unable to make a statement due to sedition. On 27.8.89 the police moved another application Ex.PG, regarding the nature of injury on Veer Bhan and he, vide his endorsement Ex.PG/1, declared injury No.1 as dangerous to life.

Karambir (PW1) and Veer Bhan (PW2) have stated, that they were present near the Khera Chowk in the village. At about 9.00 p.m., appellants came and asked them to play Holi. When they refused,

thereafter, after about 20 minutes, the appellants came back and inflicted injuries on

the person of both, Karambir and Veer Bhan. Karambir (PW1) further stated, that the police came at about 11.00 p.m. and recorded his statement Ex.PA, when he was admitted in Civil Hospital, Kaithal. Veer Bhan (PW2), by that time, had been referred to PGI, Chandigarh. Both, Karambir Singh (PW1) and Veer Bhan (PW2) have corroborated each other on the material aspects of the case. Both are stamped eye witnesses. They get corroboration from the medical evidence.

I am of the considered opinion that there is no infirmity in the judgment of the learned Additional Sessions Judge, Kaithal. Sentence seems to be on the higher side. Occurrence in this case had taken place on 22.3.1989. Appeal in this court was filed in 1991. The sword of conviction has been hanging over the head of the appellant, for the last 18 years. This itself is a punishment. Sentence of appellant is modified to that already undergone. Appellant is directed to pay compensation of Rs. 7000/- to Veer Bhan(PW2) and Rs. 3000/- to complainant Karambir Singh (PW1). The compensation shall be paid within three months of the passing of this order.

With the above modification in sentence, appeal is dismissed on merits.

Criminal Revision No. 585 of 1991 is also dismissed.

(MEHTAB S. GILL)
JUDGE

April 04, 2007
Sunita